

FUNDAMENTALS OF TRIAL ADVOCACY COURSE

April 3-7, 2017
Phoenix, Arizona



JURY SELECTION

Presented by:

RENE SCHANKS

Deputy County Attorney
Maricopa County Attorney's Office

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
1951 West Camelback Road, Suite 202
Phoenix, Arizona 85015

ELIZABETH ORTIZ
EXECUTIVE DIRECTOR

Jury Selection

1. Basics:

a. Purpose: Expose Juror Bias

1 How do we do that:

1. _____ conducted Voir Dire
2. Use of a _____ (SJQ)
3. Combination of Voir Dire and SJQ

2 Roadblocks we Face:

1. Peer Pressure & Self Esteem
2. Genuine inability to gauge the depth of their own bias
3. The lack of opportunity because the right questions were never asked!!!
4. A willingness to lie about the bias

b. Methods:

1 _____

2 _____

c. Number of Jurors: ARS §21-102

Misdemeanor _____

Felonies

30 years and more _____

29 years and under _____

Alternates: Rule 18.2

1. Court may qualify additional jurors as deems necessary

2. Rule 18.5(h) how alternates are selected—_____

d. Note Taking during voir dire

2. 7 Objectives of Voir Dire

1. Build Rapport
2. Establish Credibility for the Case - Attorney
3. Gather information in support of challenges
4. Stimulate conversation with jurors
5. Educate
6. Advocate
7. Understand the jury's values that will impact the verdict

3. Effectively Meeting the 7 Objectives

a. _____:

- 1 Extensive in scope
- 2 Individualized and personalized
- 3 Doesn't invade privacy unnecessarily

b. _____:

- 1 Attorney listens to what jurors say, probes appropriately

c. _____:

- 1 Sensitive, caring and concerned response to jurors
- 2 Doesn't seek to commit
- 3 Asks only questions which elicit responses that will be used for jury selection/opening statement

4. Preparation:

Prior Preparation Prevents Piss Poor Performance

a. Questions:

1 Gaining Information

1. "What" questions will reveal _____ data
2. "Why" questions will reveal a juror's _____
3. "How" questions usually reveal a juror's true _____

2 Use the E.A.R Method

1. Experience

- a. Have you or anyone close to you ever been in a fight/physical altercation?
- b. Tell me about the fight – what happened?

2. Attitude

- a. How did you feel about your brother getting in this fight at Hooters?

3. Rules (what did they learn as a result of this experience)

- a. Were you satisfied with the end result of this incident?

3 Give Jurors Time to Think: (www.trialtheater.com Elliot Wilcox)

1. **Ask the question of the entire panel (and tell them how they should respond):** “*By show of hands*, has anyone here ever been wrongfully accused of something?”
2. **Show them how to respond:** While asking the question, raise your own hand in the air. (Telling them how to respond and then *showing* them how to respond will encourage greater responses.)
3. **Pause.** Don’t rush it. Mentally count to 10 or so before you even *think* about saying anything else or moving to another topic.
4. **Look ‘em in the eyes.** While you’re pausing, make eye contact with several jurors and use the power of your eye contact to encourage responses. Keep an eye out for the ones who look like they’d *like* to respond, but haven’t made up their minds yet.
5. **Nobody volunteered? Pick on someone.** Actually, pick about 3-4 people, from different parts of the room, and ask them directly: “Mrs. Jones, have **you** ever been wrongfully accused of something?” By asking them directly, sometimes you’ll prompt a better response. (A good place to start is with the people who looked like they *wanted* to respond, but didn’t raise their hand.)
6. **Ask the entire panel again.** Even if no one responds to your individual questions, it’s not a waste of time, because you’re giving the other jurors time to finish thinking their way through your question. Now that they’ve had enough time to finish thinking, ask the entire panel once again, perhaps adding a bit of a challenge to your question: “Really? No one here has **ever** been wrongfully accused of anything?”
7. **Pause (again). Look ‘em in the eyes (again).** Hopefully, this will prompt any hold-outs into answering the question. If not, consider rephrasing the question, or moving on to another topic. At least you’ll know that you didn’t cut off anyone’s thought process and prevent them from answering.

4 Hot Topics:

1. Race
2. Police experiences
3. Media
4. Civil Cases pending
5. Safety
6. Schools
7. Discipline
8. Child care
9. Alcohol and drug use
10. Domestic violence
11. Child sexual abuse
12. Child physical abuse
13. Adult sexual assault
14. Miscellaneous

5. What to Avoid During Voir Dire

a. Top 10 List

10

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1. Remember...jurors are not witnesses
 2. Provide a “safe” posture when questioning jurors
 3. Converse with them...not attack
 4. Keep an open mind to their responses. Don’t judge them openly

9

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1. Remember...jurors feel slighted if you do not ask them questions or give one too much attention
 2. Protect the not-so-bright jurors
 3. Prepare questions everyone can and should answer
 4. Ignoring theories on group dynamics and concentrating on one or two specific jurors

8

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1. Prepare...don’t ignore.
 2. Design questions that address these issues
 3. Do Not Neglect to voir dire on case weaknesses
 4. Anticipate adverse answers or comments. Do NOT be afraid to let the juror expose personal bias against your case
 5. Argue for individual voir dire *in camera* for sensitive questions
 6. Always give feedback when they answer questions
 7. Use a SJQ

7

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1. Ask questions
 2. You should be asking about the weaknesses in your case
 3. If you don’t have a weakness you are ill-prepared for trial

6

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1. Generally used in most complex cases and capital cases

5

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1. Avoid “talking down” to jurors. Remember...the average juror reads and understands at an 8th grade level
 2. Use every day, ordinary language found in any newspaper
 3. Don’t use legalese, acronyms, legal or police jargon
 4. Do not speaking in the Abstract
 - a. Describe your case in simple terms
 - b. Design case-specific questions
 - c. Use principles of personalization. Use words and descriptions that involve them

d. Use examples when you can

4

1. Get a Poker Face
2. Do not making it uncomfortable for a juror to express an honest opinion or disagree with you
3. Give jurors feedback on their responses
4. Ask the panel does anyone else AGREE with Juror

3

1. Talking More Than Your Jurors
2. Use Open-ended Questions
3. Questions should be less than 20 words each.
4. Direct Questions to Individuals, not just the group
5. Make sure each juror speaks at least twice
6. Avoid
 - e. Formulating questions so that no response is the desired response
 - f. Embarrassing the "not so bright" juror.

2

1. List of Case Strengths & Weaknesses
2. Write Voir Dire Well in Advance of Trial
3. Design Questions that Probe Each and Every Strength and Weakness
4. Think about Jury De-selection while Preparing Case Themes and Opening
5. Failure to Ask the Court Permission to use a SJQ

1

1. Thinking your case hasn't started until after the jury is picked
2. Jury Selection is the first time you get to advance your theory of the case
3. First impressions last throughout the case

6. Have the Information Now What?

a. Challenges for _____

1 What is it

1. A request that a prospective juror be dismissed because there is a specific and forceful reason to believe the person cannot be fair, unbiased or capable of serving as a juror. The judge determines if the person shall be dismissed.
2. Causes include
 - a. acquaintanceship with either of the parties, one of the attorneys or a witness,
 - b. The potential juror's expression during voir dire (questioning of the prospective jurors) of inability to be unbiased due to prior experience in a similar case (having been convicted of drunk driving, being a battered wife, etc.),

- c. any obvious prejudice, or
- d. Inability to serve (such as being mentally disturbed).
- e. Knowledge of the facts
- f. Any other basis for believing he/she might not be impartial.

2 When does this happen

- 1. Generally after the Judge asks all the questions
- 2. Sometimes they will do as they ask questions

3 Passing the Panel for Cause

b. Challenges

1 What is it

- 1. The right of the plaintiff and the defendant in a jury trial to have a juror dismissed before trial without stating a reason.

2 When do you do this

- 1. After all questions have been asked

3 How many do you get (Rule 18.4(c))

- 1. Capital Case:
- 2. Superior Court Cases:
- 3. Limited Jurisdictions:
- 4. Co-Defendants: allowed ½ the number allowed to one defendant, prosecutor does not get any more.

4 How should you strategically do your strikes

c. Batson

1 What is this

Strike a juror based on race, gender, religious discrimination:

Prima Facie showing the party struck the juror for discriminatory reason—

Race, gender, religious reasons

Party defending the strike must provide a race neutral reason for the strike

Court must determine and put on the record if there is a violation of Batson.

Violation: juror back on the panel

No violation: juror remains stricken and does not serve on panel.

Must raise issue or waived on appeal.

2 What do you need

- 1. Race Neutral Reason of why struck juror

3 State call Batson violation on the defense